

**Before the Environment Court
At Auckland
ENV-2019-AKL-000018**

Under the Resource Management Act 1991

In the matter of an appeal against an abatement notice requiring the removal
of a boatshed in the Costal Marine Area adjoining 75
Sarsfield Street, Herne Bay, Auckland

Between **Duke**

Appellant

And **Auckland Council**

Respondent

**Memorandum of counsel for the respondent providing an update as to the
related certificate of compliance application**

Date: 1 October 2019



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MAY IT PLEASE THE COURT:

- 1 The purpose of this memorandum is to provide an update to the Court as to the potential resolution of this matter, and the likelihood that the scheduled hearing time (commencing 11 November 2019) will not be required.
- 2 Counsel acknowledges that the parties were directed to file a joint memorandum of counsel by Friday 27 September 2019. Counsel has engaged with counsel for the appellant as to the content of this memorandum, who supports its filing with the Court. It is not filed as a joint memorandum due to availability constraints of counsel for the appellant, who is currently on leave.

Background

- 3 As the Court is aware, the appeal relates to an abatement notice issued by Auckland Council to the appellant in respect of a structure in the Coastal Maine Area (CMA) adjoining 75 Sarsfield Street, Herne Bay. The abatement notice was issued after the Hight Court overturned a decision of the Council to issue a resource consent for the construction of a structure in the CMA at that location.
- 4 Since that time, the appellant has filed an application for a certificate of compliance (COC) with the Council relating to the boatshed structure. The use of that structure for helicopter purposes is not covered by that COC application. Following resolution of substantive concerns with the initial application, the independent planner engaged by the Council will issue a recommendation that the COC be granted within the next few days, with the delegated decision on the COC to be made by the duty commissioner.


Abatement notice

- 5 On the basis that the COC is anticipated to shortly be issued, the Council proposes to withdraw the abatement notice. That withdrawal of the

notice will then mean that there is no necessity to continue with the appeal to that notice.

- 6 The parties will provide an update to the Court following the decision by the duty commissioner on the COC application, and the abatement notice is formally withdrawn.
- 7 The appellant has indicated that their position on costs on the appeal will be confirmed once the abatement notice is withdrawn.

Date: 1 October 2019


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S F Quinn
Counsel for Auckland Council